

(3) A determination by NMFS that the mitigation, monitoring, and reporting measures required under §§217.74 and 217.75 and the Letter of Authorization were undertaken and will be undertaken during the upcoming period of validity of a renewed Letter of Authorization; and

(4) A determination that the number of marine mammals taken by the activity will have no more than a negligible impact on the affected species or stocks of marine mammal(s), and that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(b) If a request for a renewal of a Letter of Authorization issued under §§216.106 and 216.128 of this chapter indicates that a substantial modification to the described work, mitigation, or monitoring undertaken during the upcoming season will occur, NMFS will provide the public a period of 30 days to review and comment on the request. Review and comment on renewals of Letters of Authorization are restricted to:

(1) New cited information and data indicating that the determinations made in this document are in need of reconsideration; and

(2) Proposed changes to the mitigation and monitoring requirements contained in these regulations or in the current Letter of Authorization.

(c) A notice of issuance or denial of a renewal of a Letter of Authorization will be published in the FEDERAL REGISTER within 30 days of a determination.

(d) NMFS, in response to new information and in consultation with the AAC, may modify the mitigation or monitoring measures in subsequent LOAs if doing so creates a reasonable likelihood of more effectively accomplishing the goals of mitigation or monitoring set forth in the preamble of these regulations. Below are some of the possible sources of new data that could contribute to the decision to modify the mitigation or monitoring measures:

(1) Results from the AAC's monitoring from the previous year.

(2) Results from general marine mammal and sound research.

§217.78 Modifications to a Letter of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to a Letter of Authorization issued pursuant to the provisions of this subpart shall be made by NMFS until after notification and an opportunity for public comment has been provided. A renewal of a Letter of Authorization under §217.77 without modification is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in §217.70(b), a Letter of Authorization may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the FEDERAL REGISTER within 30 days subsequent to the action.

Subparts I–Q [Reserved]

Subpart R—Taking of Marine Mammals Incidental to Operation and Maintenance of the Neptune Liquefied Natural Gas Facility Off Massachusetts

SOURCE: 76 FR 34172, June 13, 2011, unless otherwise noted.

EFFECTIVE DATE NOTE: At 76 FR 34172, June 13, 2011, subpart R was added, effective July 11, 2011 through July 10, 2016.

§217.170 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to Neptune LNG LLC (Neptune) and those persons it authorizes to conduct activities on its behalf for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occur incidental to commissioning and operation, including maintenance and repair activities, at the Neptune Deepwater Port (Port).

(b) The taking of marine mammals by Neptune may be authorized in a Letter of Authorization only if it occurs at the Neptune Deepwater Port

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within Outer Continental Shelf blocks NK 19-04 6525 and NK 19-04 6575, which are located at approximately 42°28'09" N. lat and 70°36'22" W. long.

§ 217.171 Effective dates.

Regulations in this subpart are effective from July 11, 2011, through July 10, 2016.

[76 FR 35996, June 21, 2011]

§ 217.172 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§ 216.106 and 217.177 of this chapter, the Holder of the Letter of Authorization (hereinafter “Neptune”) may incidentally, but not intentionally, take marine mammals within the area described in § 217.170(b), provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate Letter of Authorization.

(b) The incidental take of marine mammals under the activities identified in § 217.170(a) is limited to the following species and is limited to Level B Harassment:

(1) Mysticetes:

(i) North Atlantic right whale (*Eubalaena glacialis*)—120 (an average of 24 annually).

(ii) Fin whale (*Balaenoptera physalus*)—145 (an average of 29 annually).

(iii) Humpback whale (*Megaptera novaeangliae*)—390 (an average of 78 annually).

(iv) Minke whale (*Balaenoptera acutorostrata*)—90 (an average of 18 annually).

(v) Sei whale (*Balaenoptera borealis*)—60 (an average of 12 annually).

(2) Odontocetes:

(i) Long-finned pilot whale (*Globicephala melas*)—595 (an average of 119 annually).

(ii) Atlantic white-sided dolphin (*Lagenorhynchus acutus*)—1,935 (an average of 387 annually).

(iii) Bottlenose dolphin (*Tursiops truncatus*)—50 (an average of 10 annually).

(iv) Common dolphin (*Delphinus delphis*)—100 (an average of 20 annually).

(v) Risso’s dolphin (*Grampus griseus*)—100 (an average of 20 annually).

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(vi) Killer whale (*Orcinus orca*)—100 (an average of 20 annually).

(vii) Harbor porpoise (*Phocoena phocoena*)—25 (an average of 5 annually).

(3) Pinnipeds:

(i) Harbor seal (*Phoca vitulina*)—75 (an average of 15 annually).

(ii) Gray seal (*Halichoerus grypus*)—75 (an average of 15 annually).

§ 217.173 Prohibitions.

Notwithstanding takings contemplated in § 217.170 and authorized by a Letter of Authorization issued under §§ 216.106 and 217.177 of this chapter, no person in connection with the activities described in § 217.170 may:

(a) Take any marine mammal not specified in § 217.172(b);

(b) Take any marine mammal specified in § 217.172(b) other than by incidental, unintentional Level B Harassment;

(c) Take a marine mammal specified in § 217.172(b) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or a Letter of Authorization issued under §§ 216.106 and 217.177 of this chapter.

§ 217.174 Mitigation.

(a) When conducting the activities identified in § 217.170(a), the mitigation measures contained in the Letter of Authorization issued under §§ 216.106 and 217.177 must be implemented. These mitigation measures include but are not limited to:

(1) Major Repairs (May 1–November 30):

(i) During repairs, if a marine mammal is detected within 0.6 mi (1 km) of the repair vessel (or acoustically), the vessel superintendent or on-deck supervisor shall be notified immediately. The vessel’s crew will be put on a heightened state of alert. The marine mammal will be monitored constantly to determine if it is moving toward the repair area.

(ii) Repair vessels shall cease any movement in the area if a marine mammal other than a right whale is